

Hi Megan, John, and Joy:

I would also like to thank you for the opportunity to provide these additional EPA comments on the subject Administrative Draft SEIS. These comments are provided on behalf of the Water Division and address only dredging, dredged material disposal, and fill aspects of the project pursuant to EPA's authorities under Section 404 of the Clean Water Act and Section 102 of the Marine Protection, Research, and Sanctuaries Act. We expect to provide more detailed comments upon review of the public draft of the SEIS.

We are pleased to note that the ADSEIS does generally reflect the project purpose and alternatives mix we had agreed to back in late 2006. In particular, the additional Pier 300 fill area, and the tern nesting island in the Permanent Shallow Water Habitat Area, have been dropped from the project. In addition, remediation work in Consolidated Slip is now clearly on its own track and will remain subject to separate decisionmaking, as is appropriate.

There remains, however, one aspect of the current document which has not been corrected adequately based on our prior meetings and discussions, and which should be corrected before the official DSEIS is distributed to the public. That is, the discussion about any dredging beyond the authorized overdepth allowance. As you know, severe overdredging on previous phases of the LA Deepening Project was of critical concern to EPA. It resulted in an EPA enforcement investigation being formally initiated; the investigation was discontinued only once there was national-level agreement to modify and clarify USACE's overdepth dredging policy. The revised policy was published by USACE in January, 2006. It requires that sediments must be characterized to depths likely to be removed ("Characterization Depth"), and that the full volume to such depths be included in environmental documentation and other project authorizations. (It also clearly allows for overdepth dredging in excess of the 2 feet that District Engineers are generally empowered to authorize, when appropriate and necessary, subject to higher-level USACE approval.)

The ADSEIS, in Table 2-1 and associated text, continues to include a volume over-and-above the stated 2-foot overdepth allowance. This volume (158,000 cy in Table 2-1) is inappropriate to plan for in this manner and must be removed (here and anywhere else in the document that it appears). Table 2-1 already rounds up to achieve the "planning" volume of 3 million cy, and we would not object to continuing to use that planning volume as the basis for the environmental evaluation in the SEIS. However, as we have stated on several occasions, it is inappropriate to PLAN to be unable to generally stay within authorized project dimensions and volumes. In general, it would be expected that LESS than the entire volume associated with the authorized overdepth allowance would actually be removed during dredging. This is true even though we know that in isolated locations there are likely to be minor exceedences of the DEPTH limitation ("Characterization Depth"). If the LA District and POLA truly believe, given the specific sediment types being dredged and the specific equipment which must be used, that having only a 2-foot overdepth allowance will result in other than minor, isolated exceedences of the overdepth limitation ("Characterization Depth"), then approval for a greater overdepth allowance should be formally sought from higher authority. (By the way, if in fact this is what the LA District and POLA believe, EPA is specifically interested in seeing the written justification because at this point we would not expect a deeper allowance would be needed. Certainly any proposed justification should NOT be based on previous, less-than-rigorously-controlled dredging on this same project.)

This issue can be addressed with a very easy editorial fix. At a minimum, remove the "Additional dredging volumes" category from Table 2-1 and any similar appearances (but, rounding up to 3 million cy should still be fine). Then, if anything needs to be said at all about dredging beyond the overdepth allowance, it should be narrative only and, for example, could simply state something like:

USACE and EPA understand that minor quantities of material below the Characterization Depth may be removed in isolated areas during dredging. However, these volumes should be more than offset by material left in place above the Characterization Depth. The dredging volumes in Table 2-1 are therefore considered worst case volumes. There is no incentive for the dredging contractor to dredge deeper than necessary, as no payment will be made for the removal of such material. In addition, as noted in the January, 2006 USACE policy, "Dredging below the maximum depth and beyond the maximum width characterized and evaluated in the environmental documentation for a Federal navigation project or permit may be subject to environmental compliance enforcement."

Thank you again for the opportunity to comment on the ADSEIS. Please contact me if there are any questions about these additional EPA comments. We look forward to reviewing the public draft SEIS in detail soon.

Brian D. Ross
EPA Region 9, WTR-8
Dredging & Sediment Management Team
75 Hawthorne Street
San Francisco, CA 94105
415-972-3475
Fax 947-3537